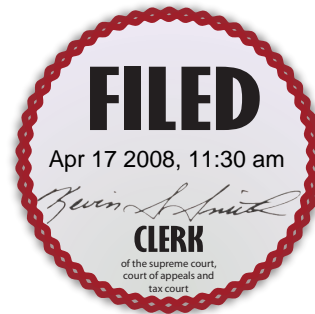


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES MOORE,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0708-CR-485
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
Cause No. 49G06-0705-FC-93771

April 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Charles Moore appeals his sentence following his conviction for Operating a Motor Vehicle While Privileges are Forfeited for Life, a Class C felony. He presents a single issue for our review, namely, whether the trial court abused its discretion when it sentenced him.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 25, 2007, the State charged Moore with operating a vehicle while privileges are forfeited for life, and Moore pleaded guilty to that charge. The plea agreement capped Moore's sentence at four years. At sentencing, Moore testified that he lives with his wife and his son. Moore also testified that he and his wife babysit for his four-year-old granddaughter sometimes. The trial court identified one aggravator, namely, Moore's extensive criminal history, and one mitigator, namely, his guilty plea. The trial court found that the aggravator and mitigator had equal weight and imposed the advisory sentence of four years. This appeal ensued.

DISCUSSION AND DECISION

Under the advisory sentencing scheme, "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified in part on other grounds, 875 N.E.2d 218 (Ind. 2007). We review the sentence for an abuse of discretion. Id. An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." Id.

A trial court abuses its discretion if it (1) fails “to enter a sentencing statement at all[,]” (2) enters “a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons,” (3) enters a sentencing statement that “omits reasons that are clearly supported by the record and advanced for consideration,” or (4) considers reasons that “are improper as a matter of law.” Id. at 490-91. If the trial court has abused its discretion, we will remand for resentencing “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” Id. at 491. However, the relative weight or value assignable to reasons properly found, or to those which should have been found, is not subject to review for abuse of discretion.¹ Id.

Moore’s sole contention on appeal is that the trial court should have identified as a mitigator the undue hardship his incarceration will inflict on his dependents.² A finding of mitigating circumstances lies within the trial court’s discretion. Widener v. State, 659 N.E.2d 529, 533 (Ind. 1995). The trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Chambliss v. State, 746 N.E.2d 73, 78 (Ind. 2001). And the sentencing court is not required to place the same value on a mitigating circumstance as does the defendant. Beason v. State, 690 N.E.2d 277, 283-84 (Ind. 1998).

¹ Moore does not make any argument under Indiana Appellate Rule 7(B).

² Moore also asserts, without supporting argument, that the trial court improperly balanced the aggravator and mitigator, but as Anglemyer makes clear, that issue is no longer available on appeal.

Moore presented scant evidence to support this proffered mitigator. He did not present any evidence, for instance, regarding the amount of his yearly income or whether he was the sole provider for his family. Moore has not demonstrated that the trial court abused its discretion when it did not identify the undue hardship mitigator. Therefore, the trial court did not abuse its discretion when it sentenced Moore to four years.

Affirmed.

SHARPNACK, J., and DARDEN, J., concur.